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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Mexico: Adequate Medical-forensic examinations can be first step to combat torture and end impunity [1]

Amnesty International welcomes the report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez (henceforth the Special Rapporteur) on his visit to Mexico from 21 April to 2 May 2014.[2] This report provides a valuable assessment of the worrying situation of torture and other ill-treatment in the country.

Amnesty International documented the widespread occurrence of torture and other ill-treatment in Mexico in its report: *"Out of Control: Torture and Other Ill-Treatment in Mexico"*, published in September 2014.[3] The organization also launched a global campaign called "Stop Torture" [4] last year. This campaign identified Mexico as a high priority country because of the seriousness of torture in the country, even though the government has promised to prevent and punish torture and other ill-treatment on many occasions, with few meaningful results.

In recent years, Amnesty International has documented many cases of torture. The common denominator of these cases is that victims say they may have been tortured by a wide range of police forces, both preventive and judicial, at the three levels of government (federal, state and municipal) or by members of the armed forces. The Amnesty International report illustrates the general pattern by describing more than 20 cases, many of which involved more than one victim.

As the Special Rapporteur notes in his report, most cases of torture concern the detention of victims for their presumed involvement with organized crime (paragraph 23). These cases occur in the context of a deterioration in public security, the government's policy of fighting organized crime and the considerable increase in the number of police officers and members of the armed forces in some states since 2006.

In the cases known to Amnesty International, most victims alleged they were tortured during the first hours of detention. The use of torture presumably had the objective of extracting "confessions" or statements implicating other people in criminal activity. In most cases, the victims were eventually released without charge, but only after long periods of detention. In some cases, victims were convicted despite serious shortcomings in judicial procedures, including the lack of a full and effective investigation into allegations of torture and other ill-treatment and the continued use of evidence obtained under coercion.

As the Special Rapporteur says, torture occurs in a context of impunity in which there are very few convictions for torture. This impunity is perpetuated by structural flaws at federal and state levels (paragraph 34), such as the reluctance of public prosecution services to investigate complaints and the tendency to consider torture as a less serious offence.

The Mexican government has indicated its intention to eradicate torture and other ill-treatment in the country and has ratified various international instruments on this issue. The Special Rapporteur's recommendations provide an action plan containing measures necessary to achieve this objective. **Amnesty International therefore recommends the following steps, among others:**

Public recognition and political commitment:
President Enrique Peña Nieto as well as the most senior members of his government must recognize explicitly and publicly the seriousness of the persistent problem of torture and other forms of ill-treatment in the country, thus sending

[1] Original version in Spanish
[2] A/HRC/28/68/Add.3
[3] AI Index: AMR/41/020/2014, September 2014. http://www.amnesty.org/es/library/info/AMR41/020/2014/en
[4] http://www.amnesty.org/en/stoptorture

a clear message that these violations will not be tolerated and that all cases will be investigated and punished, where torture is found.

Legislative change

Definitions of the crime of torture and other ill-treatment in federal and state legislation are inadequate. Amnesty International has noted that the plan to reform the Federal Act to Prevent and Punish Torture mentioned by the Special Rapporteur in his report (paragraph 14) is at a standstill in the Federal Congress. The Congress might be better focusing its efforts on passing a General Act that standardizes the definition of the crime of torture throughout the country, as recommended by the Special Rapporteur (paragraph 81.a).

A General Act is applicable at federal and state levels, but first requires adjustments to the constitution and subsequent approval by a majority of state legislatures. Any legislative reform in this area must be conducted transparently and in consultation with civil society and independent experts.

Prompt, full and independent investigations

Amnesty International has noted inadequacies in the application of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, better known as the Istanbul Protocol. The organization agrees with the Special Rapporteur's observations on this matter (paragraphs 36-41) and with his recommendations for dealing with these inadequacies (paragraph 82, subsections d, e, f). **Amnesty International also highlights the following specific considerations contained in its report,** which are based on a detailed review of procedures followed by the Federal Attorney General's Office (Procuraduría General de la República, PGR):

a) As a first step, the PGR should reform the internal bodies responsible for monitoring and supervising the application of the medical/psychological evaluations conducted when allegations of torture have been made. Despite the creation of a consultative committee and group to evaluate these procedures, both bodies are composed of PGR personnel who, contrary to international standards, do not have the independence required to monitor and supervise the work of their own colleagues. Amnesty International found no evidence that these bodies included independent experts or civil society representatives, even though this is a legal requirement. Nor is any substantive information available on the analysis by the said bodies of the application of the PGR's specialized procedure or the formulation of recommendations to forensic doctors.

b) The lack of independence and impartiality of the monitoring and supervision bodies has perpetuated serious inadequacies in the application of the Istanbul Protocol. After more than a decade since the PGR included criteria from this protocol into its own specialized procedure, it is necessary to reform both the application and monitoring and supervision mechanisms of this procedure in order to guarantee public scrutiny through the active participation of civil society and independent experts. The reform should guarantee free access by these mechanisms to the reports, methodology and impact of the reports on criminal investigations. Civil society organizations and independent specialists should be consulted and involved in this important reform.

c) The specialized medical evaluations usually base their conclusions exclusively on physical signs documented during the initial medical evaluations, which themselves present various irregularities.[5] Amnesty International has proved that in cases where medical certificates do not report physical or psychological injuries, as happens in most cases, it is highly unlikely that the forensic evaluation will report any evidence of torture. Furthermore, Amnesty International has noted that the PGR's organizational culture leads many experts to assume that the alleged victims of torture are criminals prepared to lie in order to improve their chances of challenging the criminal charges brought against them. To change these practices and encourage the impartiality of the evaluations, the PGR should ensure the independence of its forensic personnel.

[5] Initial medical evaluations are conducted on detained persons soon after being arrested when they are turned over to authorities, with the objective of determining their general health. They are usually very brief and superficial. The medical certificates from these evaluations usually omit important details that could indicate torture or other ill-treatment.

d) Officers of the public prosecutor's office, judges and other court officials often refuse to accept reports not produced by PGR officials. Independent forensic medical services are generally classified as "secondary" evidence in investigations. Although an important ruling was made by the National Supreme Court of Justice in May 2014 confirming the obligation to accept independent reports as evidence, this ruling is not binding on judges or prosecutors.

e) In addition to ensuring the independence of forensic personnel, the state should ensure adequate training for them on the contents of the Istanbul Protocol and its techniques and methodologies, and provide effective accountability for such training. One of the main failings observed by Amnesty International is the way in which many expert's reports unjustifiably conclude there was no torture on the grounds of a lack of physical and psychological injuries. This ignores the possibility that the injuries may have healed with time, especially taking into account the delay in producing reports, which can stretch to several years after the event. This situation also leads to the closure of the judicial case and the conclusion that the allegations are false.

f) Using figures provided by the PGR itself, Amnesty International has found that specialized medical-forensic evaluations are only conducted in a minority of cases where torture is alleged. In some cases, victims have said that experts dissuaded them from continuing with their complaint or had used methods that led to re-victimization.

Amnesty International urges Mexico to take decisive, rapid and effective measures to implement the Special Rapporteur's recommendations. The organization urges members and observer states of the Human Rights Council to raise concerns and recommendations about torture and other ill-treatment in Mexico in the Council debate and in bilateral discussions with the Mexican government.